

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

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GEORGE SAMUEL, et. al.,
Plaintiffs,

vs.

LAS VEGAS SANDS, INC.,
Defendant.

LAS VEGAS SANDS, INC.,
Plaintiff,

vs.

WORLD WIDE TELE-SPORTS LTD.; et al.,
Defendants.

Case No.: 2:03-cv-0986-RLH-RJJ
(Lead Case)
Case No.: 2:04-cv-0276-RLH-RJJ

O R D E R

(Motion for Summary Judgment-#139) &
(Motion to Strike-#154)

Before the Court is Defendants Betcorp Limited and Tasman Gaming Inc.'s **Motion for Summary Judgment** (#139), filed December 21, 2006. The Court has also considered Las Vegas Sand's ("Plaintiff") Opposition (#144), filed January 8, 2007. No Reply was filed.

Also before the Court is Defendants' **Supplemental Affidavit of Justin Gisz in Support of Betcorp Limited and Tasman Gaming Inc.'s Motion for Summary Judgment**

(#153), filed February 20, 2007. The Court has also considered Plaintiff's **Motion to Strike the Supplemental Affidavit** (#154), filed February 26, 2007.

Also before the Court is Plaintiff's **Verified Emergency Motion to Continue the Dates For the Pre-trial Order and Trial** (#151), filed February 12, 2007. The Court has also considered the Defendants' Oppositions (#156 & #157), filed March 2, 2007, and Plaintiff's Reply (#158), filed March 5, 2007.

BACKGROUND

World Wide Tele-Sports Ltd. ("WWTS") operated as an online casino and sportsbook from 1997 - 2002. Plaintiff alleges that during this time, WWTS infringed upon the SANDS trademark by using the "Sands of the Carribean" trademark in conjunction with both its online casino and sportsbook. Further, Plaintiff contends that the websites "carsands.com" and "thesands.com," utilized by WWTS for the online casino and sportsbook, infringed upon the SANDS mark.

In 2002 WWTS sold the various components of its online casino and sportsbook. Tasman Gaming, Inc. ("Tasman"), a wholly-owned subsidiary of Betcorp, Ltd. ("Betcorp") (collectively "Defendants"), purchased the sportsbook assets from World Wide Tele-Sports Ltd. Thereafter, WWTS ceased doing business and ultimately dissolved. Tasman now operates a sportsbook in Antigua using the trademark WWTS.

Defendants claim they have not used either the offending websites, nor the allegedly offensive mark, "Sands of the Carribean," since purchasing the sportsbook from WWTS. Plaintiff however proceeds on the theory that Defendants are merely continuations of WWTS and are therefore still liable for the actions of WWTS.

DISCUSSION

Summary judgment "shall be rendered forthwith if . . . there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). The moving party for summary judgment has the initial burden of showing the

1 absence of a genuine issue of material fact. *Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157
 2 (1970). “A material issue of fact is one that affects the outcome of the litigation and requires a
 3 trial to resolve the parties’ differing versions of the truth.” *S.E.C. v. Seaboard Corp.*, 677 F.2d
 4 1301, 1306 (9th Cir. 1982). All justifiable inferences are to be drawn in favor of the non-movant.
 5 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255 (1986).

6 Defendants do not contend that the actions of WWTS were non-infringing. Rather,
 7 Defendants contend that they are not liable for any actions of WWTS prior to Defendants’
 8 purchase of the sportsbook, and that subsequent to the purchase, Defendants have not infringed the
 9 SANDS mark. Plaintiff has submitted sufficient evidence for the Court to find that WWTS’
 10 activities were sufficient for a jury to find WWTS liable on the Plaintiff’s claims. Consequently,
 11 the Court is only left to decide if there is any material issues of fact as to whether Defendants
 12 could be held liable for the alleged infringement. (Mot. 3.)

13 **Corporations: Successor Liability**

14 Defendants claim that Plaintiff has made no successor liability claim in this case.
 15 However, the Court finds that the Complaint adequately states a claim for successor liability. (*See*
 16 *Compl.* ¶ 6.) Plaintiff claims that the Defendants are a mere continuation of WWTS and thus may
 17 be held liable. The Supreme Court has stated that “when a corporation sells all of its assets to
 18 another, the latter is not responsible for the seller’s debts or liabilities, except where . . . (2) the
 19 purchaser is merely a continuation of the selling corporation; or (3) the transaction is entered into
 20 to escape liability.” *Golden State Bottling Co. v. NLRB*, 414 U.S. 168, 182 n.5 (1973). While not
 21 dispositive, there are two required elements for characterizing a corporation as a mere continuation
 22 of a prior corporation: (1) only one corporation remains after the transfer of assets; and (2) there is
 23 an identity of stock, stockholders, and directors between the two corporations. *U.S. v. Carolina*
 24 *Transformer Co.*, 978 F.2d 832, 838 (4th Cir. 1992); *see also Village Builders 96, L.P. v. U.S.*
 25 *Laboratories, Inc.*, 112 P.3d 1082, 1090-91 (Nev. 2005).

1 Plaintiff has submitted sufficient evidence so that a jury could find Defendants are a
2 mere continuation of WWTS. Plaintiff has submitted evidence that WWTS is now dissolved, and
3 that the dissolution took place soon after the remaining assets were transferred to Defendants.
4 Tasman's CEO testified that Tasman was created for the sole purpose of purchasing the WWTS
5 assets, that Tasman thereafter sold 100% of its stock to Betcorp, and that this process was a
6 "reverse merger." There is an identity of stock and stockholders between the two corporations,
7 and also, the former owner of WWTS now owns a substantial share of Betcorp via various family
8 trusts. Key leaders of WWTS now maintain key positions with Defendants after the "reverse
9 merger." Plaintiff has also submitted evidence that Defendants still hold themselves out as the
10 original WWTS organization and therefore have benefitted, and continue to benefit, from the past
11 infringing activities of WWTS. This and other evidence allows for the possibility of liability on a
12 continuation theory. Vis à vis this evidence, the Court cannot find that Defendants have met their
13 burden. Therefore, the Motion for Summary Judgment will be denied.

14 **Motion to Strike**

15 Defendants have filed a "Supplemental Affidavit of Justin Gisz in Support of
16 Betcorp Limited and Tasman Gaming Inc.'s Motion for Summary Judgment." (#153.) Plaintiff
17 has filed a Motion to Strike this Affidavit, or in the alternative to be permitted additional
18 discovery, and also requested sanctions. (#154.)

19 The Court understands the Motion to Strike as a means to protect Plaintiff from an
20 adverse ruling on the Motion for Summary Judgment. (#133.) Since the Court found in Plaintiff's
21 favor on the summary judgment motion, the Motion to Strike will be denied as moot. The Court
22 agrees that Plaintiff should be allowed to depose Mr. Gisz given the information he testified to in
23 his affidavit. Accordingly, the Court will order that the Defendants make Mr. Gisz available for
24 deposition within two weeks of the entry of this Order.

1 **Motion to Continue**

2 Plaintiff has not been able to complete discovery as of yet because nine (9)
3 discovery motions are still pending. However, now a proposed joint pre-trial order has been filed
4 (#170), accompanied with ten (10) motions in limine (#160-#169), which discuss the concerns
5 associated with the pending discovery motions. The Court therefore will address the parties'
6 discovery concerns through the motions in limine process. The Court indicated its reticence to
7 further delay this trial when the Court granted Plaintiff's last motion to continue. For these
8 reasons, the Court will deny the motion to continue.

9 **CONCLUSION**

10 Accordingly, and for good cause appearing,

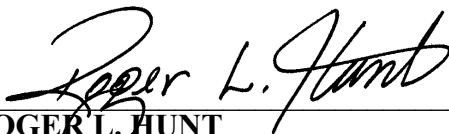
11 IT IS HEREBY ORDERED that Defendants' Motion for Summary Judgment
12 (#139) is DENIED.

13 IT IS FURTHER ORDERED that Plaintiff's Motion to Strike the Supplemental
14 Affidavit (#154) is DENIED as moot. However, the Defendants are ORDERED to make Mr. Gisz
15 available for deposition within two weeks of the entry of this Order.

16 IT IS FURTHER ORDERED that Plaintiff's Request for Sanctions (#154) is
17 DENIED.

18 IT IS FURTHER ORDERED that Plaintiff's Verified Emergency Motion to
19 Continue the Dates for the Pre-trial Order and Trial (#151) is DENIED.

20 Dated: March 13, 2007.

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24 **ROGER L. HUNT**
25 **Chief United States District Judge**
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